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EXAMINER

GIBSON, KESHIA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/749,871	Applicant(s) ZANDER ET AL.	
	Examiner Keshia Gibson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/18/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 5, filed 10/31/05, with respect to the rejection of Claim 9 under 35 USC 112(2) have been fully considered and are persuasive. The rejection of Claim,9 under 35 USC 112(2) has been withdrawn.
2. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 18 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Briseboi et al. (US 2002/0148749).

In regard to Claim 18, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document).

In regard to Claim 21, the visual characteristics comprise a pattern (Figures).

In regard to Claim 22, the wrapper and a fastening element (reminder tag or tear-away

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strip) may comprise the first and second characteristics (Figs., [0016]-[0018], [0045]-[0053]).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al.

In regard to Claim 20, Briseboi et al. disclose the claimed invention but do not expressly disclose that at least one of the first and second visual characteristics comprises a color. However, it would have been obvious to one of ordinary skill in the art to have at least one of the first and second visual characteristics comprise colors since colors and patterns are art recognized equivalents for their use as visual indicators, as supported by Deflander et al. (US 5,531,325: column 5, lines 49-53; column 8, lines 27-38) and the

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selection of any of these known equivalents to provide visual indication would be within the level of ordinary skill in the art.

8. Claims 1, 5, 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al. in view of Batra (US 6,520,330).

In regard to Claims 1, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document). Briseboi et al. do not expressly disclose that the product 206 comprises a first and second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging.

In regard to Claim 5, see discussion for C20.

In regard to Claim 11, the visual characteristics may be embossments (Briseboi, [0013], [0038]; Batra, column 8, lines 22-49).

In regard to Claim 12, both references disclose that the characteristics may be patterns (whole documents).

In regard to Claims 13 and 15, the package holds a single product component and a plurality of components (Briseboi, [0033]). It is further noted that the language “packaging component is sized and configured to hold a single, individual product component” only requires that the package be capable of doing such and that “a single, individual product component” may still exist among a plurality of product components.

In regard to Claim 14, see discussion for C22.

In regard to Claim 16, the packaging may comprise paper, which is a nonwoven material (Briseboi, [0032]-[0034]).

In regard to Claim 17, Briseboi et al. in view of Batra et al. disclose that the package may comprise a nonwoven material but do not expressly disclose that the nonwoven has a specific basis weight. However, Batra et al. do disclose that the basis weight of a paper material affects intensive properties that are visible to the consumer (column 5, lines 3-24). As such, the basis weight of the nonwoven material is considered to be a result effective variable. Thus, it would have been obvious to one of ordinary skill in the art to provide the nonwoven material with a specific basis weight, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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9. Claims 1, 5-21 rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. (US 6,601,705) in view of Batra.

In regard to Claim 1, Molina et al. disclose a packaging system comprising a product (article) having a body side liner, outer cover, and absorbent core, and further comprising a first packaging component (wrapper) and a second packaging component (container), which may all comprise a visual indicator/characteristic (signal color/indicator). Molina et al. disclose that the indicator may be any color, shape, size or the like (column 4, lines 52-67) but do not expressly disclose that the indicator comprises a first and a second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with a indicator comprising first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any indicator may be used to indicate the article's performance characteristics. Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any visual Indicator may be used to indicate the article's performance characteristics.

In regard to Claim 5, the first and second visual characteristic may comprise colors (Molina et al., whole document; also see Batra, column 6, lines 41-56).

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In regard to Claim 6, the first color may be white and the second may be selected from the group consisted of the colors claimed, including black, green, and red (column 4, lines 30-50).

In regard to Claims 7-10, Molina et al. disclose that the colors may vary in hue and imply that the colors may differ in value (luminosity) and saturation (column 3, lines 12-24; column 4, lines 30-50) but do not expressly disclose that the characteristics have specific values in hue, value, or saturation. However, Molina et al. have disclosed these may be varied to project the desired visual indication to a consumer. As such, hue, value, and saturation are considered result effective variables. Thus, it would have been obvious to one of ordinary skill in the art to vary the hues, values, and saturations of the colors of the various components of Molina et al., since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to Claims 11 and 12, the visual characteristics may be embossments or patterns (Batra, column 8, lines 22-49). Furthermore, as discussed for Claim 1, Molina et al. disclose that the indicator may be any color, shape, size or the like. It would have been obvious to one of ordinary skill in the art to have at least one of the first and second visual characteristics comprise an embossment or a pattern since colors, embossments, and patterns are art recognized equivalents for their use as visual indicators, as supported by Deflander et al. (US 5,531,325: column 5, lines 49-53; column 8, lines 27-38) and the selection of any of these known equivalents to provide visual indication would be within the level of ordinary skill in the art.

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In regard to Claims 13 and 15, the package holds a single product component and a plurality of components (Molina, Figures, column 2, line 48-column 3, line 40). It is further noted that the language "packaging component is sized and configured to hold a single, individual product component" only requires that the package be capable of doing such and that "a single, individual product component" may still exist among a plurality of product components.

In regard to Claim 14, see discussion for C22.

In regard to Claims 18 and 19, see discussion for C1.

In regard to Claim 20, see discussion for C5.

In regard to Claim 21, see discussion for C12.

10. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. in view of Batra as applied to claims 1 and 5-21 above, and further in view of Farris et al. (WO 02/30347).

In regard to Claim 2, Molina et al. in view of Batra disclose that article comprises peel strip (wrapper) removeably connected to the garment side outer cover (Swanson et al. (US 4,55,146), Figures, column 5, line 18-column 6, line 23, which is incorporated by reference by Molina et al. in column 5, lines 23-42). Molina et al. further disclose that the product may comprise the visual indicator (first and second visual characteristics) (Molina column 3, line 29; column 5, lines 1-8; incorporated) and that the peel strip (wrapper) may comprise the visual indicator (first and second visual characteristics), but do not expressly disclose that the outer cover comprises the visual indicator. Farris et

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al. disclose a packaging system for a product having a body side liner, absorbent core, and an outer cover and a packaging component, wherein the product and packaging components comprise visual indicators (whole document). Farris et al. further disclose that the visual indicator may be placed anywhere on the product, which would include the outer cover. One of ordinary skill in the art would have been motivated to modify Molina et al. in view of Batra to provide at least a portion of the outer cover with a first visual characteristic, as taught by Farris et al., since Molina et al. in view of Batra disclose that the product may be provided with a visual indicator but do not expressly disclose where and Farris et al. teach that a visual indicator on a product having a visual indicator associated with its packaging may be provided with anywhere on the product. Thus, it would have been obvious to one of ordinary skill in the art to modify Molina et al. in view of Batra to provide at least a portion of the outer cover with a first visual characteristic, as taught by Farris et al., since Molina et al. in view of Batra disclose that the product may be provided with a visual indicator but do not expressly disclose where. In regard to Claims 3-4, Molina et al. do not expressly disclose that the product comprises a substrate between the body side liner and absorbent core; however, it would have been obvious to one of ordinary skill in the art to provide the product with a surge layer, or substrate, since it was known in the art to provide disposable absorbent articles with surge layers, as supported by Mosley et al. (US 5,752,945, column 1, lines 10-23) and DiPalma (US 6,264,776, column 11, lines 51-67). Molina et al. also do not expressly disclose that the surge layer comprises as discussed for Claim 2, Molina does not expressly disclose that the surge layer comprises one of the first and second

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characteristics. However, as discussed for Claim 2, Molina discloses that the product may be colored and Farris et al. disclose that any part of the product may comprise the visual indicators. Thus, it would have been obvious to one of ordinary skill in the art to modify Molina et al. in view of Batra to provide the surge layer with a first visual characteristic, as taught by Farris et al., since Molina et al. in view of Batra disclose that the product may be provided with a visual indicator but do not expressly disclose where.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuske et al. (US 6,318,555).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson
Examiner
Art Unit 3761

klg 1/6/06

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

